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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-1499

J. J. ENOMOTO, et al.,
Petitioners,
vs.
THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,
Respondent,
JAMES C. WRIGHT, et al.,
Real Parties in Interest.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

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QUESTIONS PRESENTED

1. Did the District Court abuse its discretion under Rule 26(b)(1), Federal Rules of Civil Procedure, in compelling production of documents relevant to the disposition of the case when:

a. The Magistrate did undertake an in camera inspection of all sealed documents lodged with the District Court by petitioners and found defendants-petitioners' claims totally ancillary to the discovery proceedings,

b. A claim of privilege was never formally made nor accompanied by any showing of privilege, and

c. The privilege informally claimed was based on state law and not binding on the District Court in a federal question case?

2. Does a single District Judge, sitting in a federal question case, lack the authority to issue a discovery order which is claimed to be contrary to state discovery statutes?

3. Does a discovery order of a District Court violate the Fourth Amendment when it compels the discovery of state documents

alleged to be privileged under state law but important to the disposition of the pending action?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED AND NOT SET OUT IN PETITIONERS' BRIEF

United States Constitution, Amendment VIII:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and usual punishments inflicted."

United States Constitution, Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C., Section 1343:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42:

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal

rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

28 U.S.C. Section 2281:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under

section 2284 of this title."

Federal Rules of Civil Procedure, Rule 34:

"(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the

request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category with reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after

service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land."

42 U.S.C. Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

The amended complaint filed in the District Court on December 27, 1973, (respondents' Exhibit A) contains two independent causes of action. First, that the procedures currently being used to "administratively" segregate prisoners in isolation units violate the due process clause of the Fourteenth Amendment (Complaint, ¶60);

and, second, that the totality of physical and psychological conditions in such segregated housing units constitutes cruel and unusual punishment in violation of the Eighth Amendment (Complaint, ¶61). The discovery now disputed by petitioners relates almost entirely to this second cause of action which, unlike the first cause of action, essentially presents issues of fact rather than of law.

On February 6, 1974, defendants-petitioners moved to dismiss the complaint for failure to state a valid claim. This motion was denied by the District Court on March 14, 1974.

Thereafter, on March 20, 1974, plaintiffs-respondents[1/] filed an 8-page request for production of documents under Rule 34, F.R. Civ.P. (a copy of which is annexed to the

1/ As used herein, "respondents" refers only to those respondents who are also real parties in interest. See Rule 21(b), F.R. App. P.

Petition as Exhibit C, p. 20), seeking 24 itemized types of documents. Thereafter, petitioners filed a 3-page response essentially refusing to produce anything.

On March 5, 1974, respondents filed their Motion to Compel Production of Documents and a 43-page Memorandum of Points and Authorities in support thereof. The first hearing on the motion, which was held before District Judge Stanley A. Weigel on May 17, 1974, lasted almost an entire day. As a result of that hearing, the Judge referred the matter to U.S. Magistrate Owen E. Woodruff, Jr., for further hearings. The Magistrate held a full-day hearing on May 22, 1974, and inspected in camera all the sealed documents the petitioners had submitted to the District Court. Thereafter, on May 28, Magistrate Woodruff issued his Findings and Proposed Order granting most but not all of the discovery sought by respondents. The Magistrate recommended that a protective

order be issued limiting the access of respondents to the central files of plaintiffs-inmates and that respondents be awarded costs for their discovery motions.

On July 11, 1974, after petitioners sought review by the District Court of the Magistrate's Findings and Proposed Order, Judge Weigel held a third all-day hearing. Because of a dispute that arose at that hearing as to the meaning of the term "inmate central file", the Judge ordered the parties to return to the Magistrate for an additional hearing, which was held on July 23, 1974. At the conclusion of that hearing the Magistrate prepared a two-page "Augmentation" of his Findings of May 28. (A copy of said Augmentation is annexed to the Petition as part of Exhibit B.)

On August 2, 1974, after the resolution of all factual issues to the satisfaction of both the Magistrate and the District Judge, the latter issued an order affirming

the Magistrate's Findings and Proposed Order dated May 28, 1974, with only slight modifications. (The Judge, for example, reserved judgment on whether respondents should be awarded costs.) (A copy of the Court's Order of August 2 is annexed to the Petition as Exhibit B.)

On August 12, 1974, petitioners filed a notice of appeal pursuant to Federal Rules of Appellate Procedure, Rule 4(a), 28 U.S.C., a petition for Writ of Mandate and/or Prohibition, and a motion for a stay of the order of production. On August 15, 1974, respondents filed a response to petitioners' motion for a stay. On September 3, 1974, petitioners filed a supplemental petition for Writ of Mandate and/or Prohibition. On November 18, 1974, the Court of Appeals for the Ninth Circuit denied the petition without a hearing and on March 3, 1974, denied a petition for rehearing, rehearing en banc, and for a stay. Mr. Justice Brennan stayed

the order of production insofar as it required petitioners to produce documents from inmate files pending the filing by petitioners of a petition for Writ of Certiorari and the ruling on it.

SUMMARY OF ARGUMENT

This Court should not grant petitioners' request for Writ of Certiorari for the following reasons:

1. The issues of the petition may well be made moot because there is a motion by respondents pending before a three-judge panel of the District Court for the Northern District of California asking that court to ratify the order of the District Court which is the subject of this petition. Petitioners in their answer to that motion have raised all of the issues raised in their petition for Writ of Certiorari, and thus all the issues of their petition are now before the three-judge panel. If the panel rules on the motion before these

issues are decided by this Court, these issues will be made moot. (The defendants-petitioners' Memorandum in Opposition to the Plaintiffs' Motion for an order ratifying the order of the District Court is printed as Respondents' Exhibit B.)

2. There are substantial factual disputes on the issues that are raised in petitioners' version of the facts of this case. Petitioners argue that they are entitled to have disputed documents inspected in camera by the District Court and to have a factual decision based on a balancing of all the factors involved. In fact, not only did the Magistrate hold an in camera hearing but also the issues were argued in two full hearings before the District Court and two full hearings before the Magistrate. Petitioners in their brief neglect to mention this in camera inspection at all. In addition, the decisions of the District Court and Magistrate were based on a factual

determination of the merits of discovery in this case. Petitioners are asking this Court to "second guess" these factual decisions.

3. The District Court, in ordering discovery, did not violate its discretion. Only after the extensive hearings described above did the District Court order that the documents be made available to respondents. In addition, the Court took into account the interests of the petitioners by issuing, on the Magistrate's recommendation, a protective order which limited the access of respondents' counsel to the central files of respondents-inmates (Petitioners' Exhibit B, p. 15). Petitioners did not formally claim a specific privilege for any of the disputed documents, did not specify which specific documents were claimed to be privileged, and did not make any showing to support their blanket claim of privilege. The Magistrate found the

petitioners' claim to be so without merit that he recommended that respondents be awarded costs for bringing the motions for discovery. (The District Court reserved judgment on this issue.) Furthermore, the state statutes that petitioners claim support their arguments of privilege do not provide any privilege for judicial proceedings. More importantly, the District Court was not wrong in holding state disclosure statutes inapplicable, since that holding is supported without exception by authorities on federal law.

4. The issues in the petition do not raise important questions of law. This is an interlocutory appeal, ancillary to the merits of the case, and about an issue on which federal law is quite clear.

5. The claim of petitioners is a trivial one. This dispute primarily centers on access to the central files of inmates; and these files are in no sense confidential.

They are currently available to almost any employee of the Department of Corrections, including prison guards. Furthermore, a recent California case has held that inmates are entitled to access to most of the materials in their central files. In re Olson, 37 Cal.App. 3d 783, 112 Cal. Rptr. 579 (1974); and this decision has been implemented by the Department of Corrections. Thus petitioners' claims that the central files are confidential and that their access to respondents would wreak havoc on the California prison system are totally without basis in fact.

6. The constitutional claims petitioners raise in their brief have no support from any authority and appear frivolous. They cite no authority for their novel claim that, in federal question litigation, the decision of a federal court to follow federal rather than state discovery law is, in effect, an injunction of the enforcement

of state law and thus beyond the power of a single district judge. Likewise, petitioners' claim that the discovery order violates the Fourth Amendment flies in the teeth of the decisions of this Court and can find no support in any authority whatsoever.

7. The complaint in this case was filed on August 15, 1973. Now, almost two years later, pre-trial discovery has not even begun, largely because of the so far successful efforts of petitioners to stall this litigation in any way they can. Meanwhile, respondents continue to suffer arbitrary and capricious treatment at the hands of petitioners and are forced to live in wretched, inhuman conditions which they believe - and are prepared to prove at trial - are violations of their rights under the Eighth and Fourteenth Amendments to the Constitution. Public policy clearly indicates that, when constitutional rights

are in question, the issues should be tried and decided as soon as possible.

8. The documents which are the subject of this petition are essential to the proving of respondents' case. Failure to order discovery will deprive respondents of the opportunity to litigate their claims on the merits.

I

PETITIONERS HAVE MISSTATED THE FACTS, AND THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN COMPELLING THE PRODUCTION OF DOCUMENTS NECESSARY TO THE DISPOSITION OF THE CASE

A

Petitioners' first argument in their brief in support of their petition for Writ of Certiorari is based on the contention that the District Court refused "to balance any competing interest" between the parties to this suit. Such a contention is a gross factual misstatement of the procedures the District Court followed in this case. The claims of the petitioners were fully argued

and considered by the District Court. Indeed, the Magistrate not only dealt with the issues raised by petitioners at great length in open court, as did the District Judge in two lengthy hearings, but he also discussed them in his Findings and Proposed Order of May 28, 1974 (Petitioners' Exhibit B, p. 6).

Furthermore, the Court ordered that the documents inspected in camera by the Magistrate be shown to two of respondents' counsel under an appropriate protective order to insure that, as officers of the Court, said attorneys would not reproduce or divulge the contents thereof. Upon examining the documents, however, respondents' counsel were surprised to discover that they had earlier seen most of the sealed material alleged to contain "top secret" information, since this material had two months earlier been released to the public by the Senate Subcommittee on Civil Disorder, Chaired by State Senator Dennis E. Carpenter.

That is, the Report of that Subcommittee, entitled Gang Violence in Penal Institutions (March 15, 1974), is in substance virtually identical to the sealed documents presented to the District Court by petitioners, except that the actual names of certain inmates are deleted from the Legislative Report. This information was thus hardly "confidential", and the dramatic gesture of lodging them with the Court in sealed envelopes was a bit excessive.

Both the Magistrate and the Judge devoted an extraordinary amount of time at four separate hearings to all of the materials submitted and arguments raised by petitioners' in opposition to production. For petitioners now to assert, without any documentation or reference to the record, that these two judicial officers "deliberately refused" to balance the competing interests borders on the absurd.

B

The petitioners have not properly claimed a privilege nor have they made the required showing that the document or documents involved come within the reach of any privilege claimed to be invoked. Because they have done neither of these things, this is a particularly inappropriate case for plenary review by this Court. It is well settled that in order to invoke an applicable privilege "[t]here must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer", United States v. Reynolds, 345 U.S. 1, 7-8 (1953). In the present case, there has been no formal claim of privilege but only the affidavit of defendant Procunier (Petitioners' Exhibit D, p. 29), which consists primarily of innuendo and opinion concerning the activity of alleged prison gangs

and does not specifically claim privilege for any specific document or documents. In addition, even the limitations on discovery in Reynolds arguably should not apply to this situation: Reynolds involved issues of national security. In that area, this Court has been most reluctant to interfere with decisions of the executive departments of the federal government. In United States v. Nixon, 418 U.S. 683 (1974), this Court stated that it would not give as high a degree of deference to the President's generalized interest in confidentiality as it did to interests of national security in Reynolds. Clearly, in this case, petitioners should be required at a minimum to conform to the procedures in Reynolds.

Petitioners did not even attempt, in the District Court or in the Court of Appeals, to carry their burden of showing that any of the documents requested by respondents

came within any recognized privilege.[2/] Instead, what the District Court had before it was no more than the unsupported contentions and conclusions of counsel. For example, petitioners now seek to invoke privileges purportedly conferred by California Government Code § 6254, yet nowhere did they show that the documents

2/ See, e.g., Rogers v. Tri-State Materials Corporation, 51 F.R.D. 234, 247 (N.D. W.Va. 1970); Advisory Committee's Note to 1970 Amendment to Rule 33(a), 48 F.R.D. at 523; 8 Wright & Miller, Federal Practice & Procedure (1970 ed.), at 542-43. Such a showing, the courts have often said, "must be based upon appropriate testimony and other factual data, not the unsupported contentions and conclusions of counsel." Apco Oil Corp. v. Certified Transp., Inc., 46 F.R.D. 428, 432 (W.D. Mo. 1969). Thus courts "have insisted on a particular and specific demonstration of facts, as distinguished from stereotyped and conclusory statements." 8 Wright & Miller, supra, at 265. See also, Pleasant Hill Bank v. United States, 58 F.R.D. 97, 101 (W.D. Mo. 1973); Honeywell Inc. v. Piper Aircraft Corp., 50 F.R.D. 117, 120 (M.D. Pa. 1970).

involved "are not retained by the public agency in the ordinary course of business," or that "the public interest in withholding such records clearly outweighs the public interest in disclosure", or that the documents are "[r]ecords of complaints to or investigations conducted by" a state agency for correctional purposes. See, California Government Code § 6254 (a) and (f). And, so far as California Evidence Code § 1040 may be involved, petitioners made no attempt whatever to show that any particular document was "acquired in confidence by a public official in the course of his duty", or that "disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." See, California Evidence Code §1040. Instead, there is simply a bald claim by the Attorney General

to the effect that the defendants are entitled to the benefits of privileges they have never properly asserted. Indeed, strict scrutiny of the affidavit filed by defendant Procunier in the District Court, which essentially presents his "opinions" about various matters, reveals not a single sentence in which he even refers to any asserted state or federal privilege, much less claims its benefits with respect to particular items for which a necessary showing is made.

More importantly, the state statutes relied on by petitioners to support their claim of privilege do not apply to judicial proceedings. For example, Section 6254 of the Government Code contains certain exceptions to the California Public Information Act. Section 6260 of the same code explicitly states that "the provisions of this chapter shall not be deemed in any manner... to affect the rights of litigants, including

parties to administrative proceedings, under the laws of discovery of this state." Recent decisions by California courts have rejected outright the notion that an absolute privilege attaches to the type of documents here in question. See, In re Prewitt, 8 Cal. 3d 470, 105 Cal. Rptr. 318 (1973); In re Olson, 37 Cal.App. 3d 783, 112 Cal. Rptr. 579 (1974); Terzian v. Superior Court, 10 Cal. App. 3d 286, 294, 88 Cal. Rptr. 806, 813 (1970).

C

The blanket privilege the petitioners informally sought from the District Court was based on state law and was thus not in any way binding on the District Court. The jurisdiction of the federal courts in this case is based on 28 U.S.C. § 1343 and on 42 U.S.C. § 1983. Because this is a "federal question" case - and not a "diversity" case - the District Court is not obligated to follow state rules of privilege concerning

evidence or discovery. The law on this issue is crystal clear: Moore states that "in cases arising under federal law it is abundantly clear that there is no constitutional inhibition to abrogation of state created privileges, either in connection with the admission of evidence or in connection with pre-trial discovery." 4 Moore's 26.60[7]. The term "privileged" in Rule 26(b)(1), Federal Rules of Civil Procedure, is defined by the use of that term in the Federal Rules of Evidence, 28 U.S.C. 4 Moore's 26.60[7]. The Conference Report of the Congress on the bill establishing the new Federal Rules of Evidence makes abundantly clear that under new Rule 501 privileges of state law are not binding on federal courts in federal question litigation:

> As Justice Jackson has said: "A federal court sitting in a nondiversity case . . . does not sit as a local tribunal. In

some cases it may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state." D'Oench, Buhme & Co. v. Federal Deposit Insurance Corp., 315 U.S. 447, 471 (1942) (Jackson, J., concurring). When a federal court chooses to absorb state law, it is applying the state law as a matter of federal common law. Thus, state law does not supply the rule of decision (even though the federal court may apply a rule derived from state decisions), and state privilege law would not apply. Report of the Conference Committee, H.R. 5463, Cong. Rec., December 14, 1974, H 11930.

The authorities cited by the Conference Report, of course, are equally applicable to the decision of the District Court in this case,

even though the new rules are not yet in effect. See, for example, C. A. Wright, Federal Courts 251-252 (2d ed. 1970); Holmberg v. Armbrecht, 327 U.S. 393 (1946); DeSylva v. Ballentine, 351 U.S. 570, 581 (1956); 9 Wright & Miller, Federal Rules and Procedure, (1970 ed.) Sec. 2408; Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970); Carr v. Monroe Mfg. Co., 431 F.2d 384 (5th Cir. 1970).

Thus the decision whether or not to follow state rules of privilege was within the discretion of the District Court in the instant case.

D

The District Court was clearly correct in ordering the production of the documents sought by respondents. First of all, the blanket claim of privilege has been invoked by the defendant state officials who have been charged with proceeding in an unconstitutional manner, in order to keep relevant

documents and information hidden from plaintiffs and from the court. Secondly, the action is one brought under 28 U.S.C. § 1343 and 42 U.S.C. § 1983 to redress the deprivation of federal constitutional rights; thus considerable public policy favors the respondents' efforts to have their claim decided on the merits. Thirdly, there is a significant public interest in ascertaining the truth in any litigation, which is, of course, the very basis for the extensive and liberal discovery rules found in the Federal Rules of Civil Procedure, Hickman v. Taylor, 329 U.S. 495, 507 (1947).

These considerations are particularly compelling in the case at bar, since it is a class action--brought on behalf of approximately 1500 California prisoners--attacking one of the most widely recognized and controversial issues in California prisons, namely the long-term isolation of prisoners not charged with disciplinary

offenses in so-called "administrative segregation." Moreover, the documents here sought are not only relevant but may well be crucial to the development of respondents' case. Against these strong public policies, petitioners have made no showing that the documents requested ought to be deemed privileged by the District Court. Instead, they have relied entirely on blanket and conclusory allegations and have refused to support these allegations in any manner whatsoever.

Clearly the District Court has not violated its discretion in ordering the production of documents in this case.

II

A SINGLE DISTRICT JUDGE, SITTING IN A FEDERAL QUESTION CASE HAS THE AUTHORITY TO ISSUE A DISCOVERY ORDER WHICH PETITIONERS CLAIM IS CONTRARY TO STATE DISCOVERY STATUTES

In their second argument petitioners argue that the failure of the District Court to follow state discovery law in effect enjoins

the enforcement of those laws. There are three main problems with this argument.

Firstly, as pointed out in Argument I above, the state statutes cited by petitioners do not provide any privilege for judicial proceedings. Thus, in this case, there is no conflict between state and federal law.

Secondly, even if there were a conflict, petitioners offer no support for their novel claim that a discovery order is equivalent to an injunction. If the logic of their argument were extended, the ruling of any court on a conflict-of-law issue would be an "injunction" of the law held not to apply. If this Court ever held that a three-judge court had to be convened in a federal question case to determine the validity of an asserted state-created privilege, the number of three-judge courts would become unmanageable overnight.

Thirdly, 28 U.S.C. § 2281 requires a three-judge court only when the operation or

enforcement of a state statutory or regulatory provision is enjoined as unconstitutional. Even if this Court were to agree with the novel proposal that a discovery order is equivalent to an injunction in this type of case, there is no hint anywhere in the proceedings before the District Court that the state disclosure statutes cited in petitioners' brief are challenged as unconstitutional.

III

A DISTRICT COURT SITTING IN A FEDERAL QUESTION CASE DOES NOT VIOLATE THE FOURTH AMENDMENT WHEN IT ISSUES AN ORDER COMPELLING DISCOVERY OF STATE DOCUMENTS ALLEGED TO BE PRIVILEGED UNDER STATE LAW BUT IMPORTANT TO THE DISPOSITION OF A PENDING ACTION

Petitioners' Fourth Amendment arguments are wholly without merit. The constitutionality of the discovery procedures of the Federal Rules of Civil Procedure has never been thought to run afoul of the Fourth Amendment. See 8 Wright & Miller, Federal Practice & Procedure, Sec. 2202

at 587-89, and authorities cited therein. The Fourth Amendment requires only that the disclosure sought shall not be unreasonable, United States v. Morton Salt Co., 338 U.S. 632 (1950); Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946); and the underlying discovery order of the District Court cannot be considered unreasonable under the circumstances of this case.

In the first place, petitioners continually attempt to characterize the documents in question as confidential and hence privileged. However, as pointed out above in Argument I, they have failed to formally claim any specific privilege or to make any showing justifying such privilege. Instead they have relied entirely on unsupported, general, and conclusory allegations of the "horrors" that will occur if the District Court's order is enforced. Surely, it cannot be considered unreasonable, under the circumstances of this case, to require that

an officer of the appropriate agency personally consider and pass upon the privilege to be invoked, or that he thereafter state with specificity the rationale of the claimed privilege.

Furthermore, there are many situations in which it is not unreasonable for a District Court -- before which a privilege has been asserted in response to a Rule 34 request for production -- to weigh the competing interests of confidentiality and disclosure and strike the balance in favor of disclosure. In fact, such decisions are made every day in the District Courts. The number of hearings held by the District Court in this case and the protective order limiting the access of respondents to the central files of plaintiff-inmates which the Magistrate recommended and the District Court issued are strong evidence of the attempt of the District Court to balance the interests of both sides. In this case,

as we have seen, (1) petitioners made no attempt showing that the documents were confidential, or that petitioners would be injured by disclosure; (2) the documents sought are crucial to the respondents' case; and (3) the documents are those of a public agency, cf. United States v. Morton Salt Co., supra, 388 U.S. at 652, which keeps hundreds of prisoners in isolation units whose conditions are attacked in the underlying litigation as unconstitutional. Under these circumstances, it can hardly be considered "unreasonable" for the District Court to have struck the balance between confidentiality and disclosure in favor of the latter. Nor can it possibly be said that such a finding of reasonableness is an abuse of discretion or an usurpation of power such as to justify review by way of mandamus. See Will v. United States, 389 U.S. 90, 95-96, (1967); Roche v. Evaporated Milk Ass'n., 319 U.S. 21, 26 (1943).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the instant petition for Writ of Certiorari should be denied.

Respectfully submitted,

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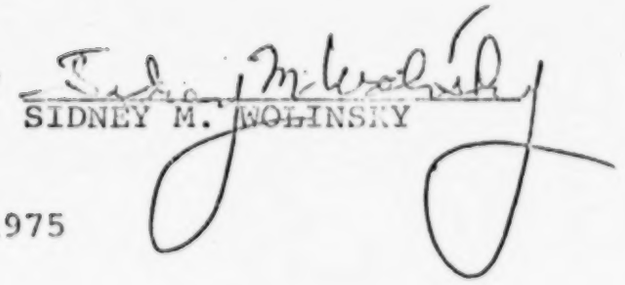
By 
SIDNEY M. WOLINSKY

DATED: June 25, 1975

EXHIBIT

A

CIV. NO. C-73-1422 SAW

AMENDED COMPLAINT

ORIGINAL FILED
December 27, 1973

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMIE GONZALO, JAMES C. WRIGHT, JERRY LEE PENA, ROBERTO PABLO SALIS, MICHAEL S. GUILE, LOUIS X. RICHARDSON, ROBERTO FRIAS, individually and on behalf of all others similarly situated, Plaintiffs, vs. RAYMOND K. PROCUNIER, Director of the Department of Corrections of the State of California; W. T. STONE, Superintendent of the California Training Facility at Soledad; JACOB GUNN, Warden of the California State Prison at Folsom; LOUIS S. NELSON, Warden of the California State Prison at San Quentin; and L. N. PATTERSON, Superintendent of the Deuel Vocational Institution, Defendants,	CIV. NO. C-73-1422 SAW AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, as and for their amended complaint, allege as follows:

INTRODUCTION

This suit in behalf of a large class of inmates at four California state prisons comprises a constitutional challenge, under the due process and cruel and unusual punishment clauses, to (a) arbitrary procedures for confining inmates in so-called maximum-security segregated housing units (variously known as "the hole," "lock-up," "solitary confinement" and the "Adjustment Center") and (b) the unnecessarily brutal and inhuman conditions of such confinement.

I. JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343(4) and 2201. This is a suit authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights, privileges and immunities secured

by the Eighth and Fourteenth Amendments to the Constitution of the United States. This is also a proceeding for a declaratory judgment as to plaintiffs' rights to be free from such deprivation by defendants acting under color of state law.

II. PARTIES

2. Plaintiff JAMIE GONZALO is and since February 8, 1973, has been held in maximum-security segregated confinement in "B" Section at the California State Prison at San Quentin, and (since November 4, 1973) in "O" Wing at the California Training Facility, Soledad, California. Plaintiff GONZALO is a Mexican-American citizen of the United States.

3. Plaintiff JAMES C. WRIGHT is and since September 9, 1973, has been held in maximum-security segregated confinement in "O" Wing at the California

raining Facility, Soledad, California. Plaintiff WRIGHT is a black citizen of the United States.

4. Plaintiff JERRY LEE PENA is and since March, 1973, has been held in maximum-security segregated confinement in the Security Housing Unit at the California State Prison at Folsom. Plaintiff PENA is a Mexican-American citizen of the United States.

5. Plaintiff ROBERTO PABLO SALAS is and since January 16, 1973, has been held in maximum-security segregated confinement in the Security Housing Unit at the California State Prison at Folsom. Plaintiff SALAS is a Mexican-American citizen of the United States.

6. Plaintiff MICHAEL S. GUILE is and since September 28, 1973, has been held in maximum-security segregated confinement in "B" Section at the California State Prison at San Quentin.

Plaintiff GUILE is a white citizen of the United States.

7. Plaintiff LOUIS X. RICHARDSON is and since November 8, 1973, has been held in maximum-security segregated confinement in the North Segregation Unit (formerly "Death Row") at the California State Prison at San Quentin. Plaintiff RICHARDSON is a member of the Nation of Islam and a Black citizen of the United States.

8. Plaintiff ROBERTO FRIAS is and since September 7, 1973, has been held in maximum-security segregated confinement in "O" Wing at the Central Training Facility (Soledad), "B" Section and the North Segregation Unit (formerly "Death Row") at San Quentin State Prison, and, since August 15, 1973, in "K" Wing at the Deuel Vocational Institution, Tracy, California, where he is currently incarcerated. Plaintiff FRIAS is a

Mexican-American citizen of the United States.

9. Defendant RAYMOND K. PROCUNIER is Director of the Department of Corrections of the State of California. He is sued individually and in his capacity as Director of Corrections. As such Director, defendant PROCUNIER has general supervision of California prisons including the California Training Facility (Soledad), the California State Prison at Folsom, the California State Prison at San Quentin, and the Deuel Vocational Institution.

10. Defendant W. T. STONE is Superintendent of the California Training Facility (Soledad). He is sued individually and in his official capacity as Superintendent. Said defendant has general supervision and control of the California Training Facility (Soledad).

11. Defendant JACOB GUNN is

Warden of the Calfiornia State Prison at Folsom. He is sued individually and in his official capacity as Warden. Said defendant has beneral supervision and control of the State Prison at Folsom.

12. Defendant LOUIS S. NELSON is Warden of the California State Prison at San Quentin. He is sued individually and in his official capacity as Warden. Said defendant has general supervision and control of the State Prison at San Quentin.

13. Defendant L. N. PATTERSON is Superintendent of the Deuel Vocational Institution. He is sued individually and in his official capacity as Superintendent. Said defendant has general supervision and control of Deuel Vocational Institution.

III. CLASS ACTION

14. Plaintiffs bring this action on their own behalf, and, pursuant

to Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all other inmates in the custody of the California Department of Corrections who now are, or during the pendency of this action will be, confined for more than 30 days in segregated housing units in the California Training Facility (Soledad), the California State Prison at San Quentin, the California State Prison at Folsom, or the Deuel Vocational Institution. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of plaintiffs are typical of the claims and defenses of the class; and plaintiffs will fairly and adequately protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of (a)

inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties defendant herein; and (b) adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Finally, defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and corresponding declarative relief with respect to the class as a whole.

IV. FACTS

15. Plaintiffs and members of the class they represent are for reasons unknown to them confined for indefinite duration in cells in so-called "maximum-

security segregated housing units" (variously known as "the hole," "lock-up," "solitary confinement" and the "Adjustment Center") at the Calfiornia Training Facility (Soledad), the California State Prison at San Quentin, the California State Prison at Folsom and the Deuel Vocational Institution. At the California Training Facility (Soledad), such units are located in "O" and "X" Wings; at San Quentin, such units are located in "B" Section, the North Segregation Unit (formerly "Death Row") and the "Adjustment Center"; and at the Deuel Vocational Institution such units are located in "K" Wing and in "L" Wing (otherwise known as the "Adjustment Center.")

16. Although there are some minor physical differences among the aforesaid segregated housing units, they are essentially the same. Plaintiffs and members of the plaintiff class are each

confined therein for up to 24 hours a day in a cell 5 feet by 9 feet, which contains a bed, a sink, a toilet, and a shelf for personal possessions. Such cells are usually inadequately heated, infested with vermin, and pervaded by the smell of urine. Plaintiffs and their class are denied the yard privileges afforded to inmates in the general prison population, are normally allowed out of their cells only once a week for a shower, and are occasionally permitted to walk up and down the corridor in front of their cells for one-half hour per day. Plaintiffs and their class are required to eat all their meals in their cells, in which they are also required to urinate and defecate. Most cells have no windows; the only actual light that reaches them is that from a heavily barred window that may be located across a seven-foot-wide corridor in front of the cell. Many such cells lack electrical

lighting altogether. Plaintiffs and members of their class are commonly denied reading materials, law books, legal materials and access to radio and television.

17. Plaintiffs and members of their class are allowed no contact whatsoever with the general prison population. They receive only limited or no medical attention for even serious afflictions. Their visiting privileges are extremely restricted if not denied altogether. Visits that are permitted are seriously obstructed by the inmate being shackled and kept behind heavily barred glass, through which it is difficult to speak. Plaintiffs and members of their class are not permitted to leave the housing unit for any purpose unless they are shackled and closely guarded. Plaintiffs and their class are afforded no rehabilitative or work programs, are denied engagement in educational activities of any sort, and

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are therefore essentially "warehoused."

18. The pattern and practice of arbitrary classification for lengthy and indefinite confinement in maximum-security segregated housing units, herein generally and specifically alleged, and the brutal and inhuman physical conditions, psychological conditioning and indefinite duration of such confinement, also generally and specifically alleged herein, has led and will continue to lead to the psychological destruction and dehumanization for lengthy and indefinite confinement in maximum-security segregated housing units, herein generally and specifically alleged, and the brutal and inhuman physical conditions, psychological conditioning and indefinite duration of such confinement, also generally and specifically alleged herein, has led and will continue to lead to the psychological destruction and dehumanization of named

plaintiffs and members of the class they represent, is the proximate and major cause of violence experienced in California State Prisons, and is not necessary to the achievement of any legitimate penal aim or other state purpose.

19. The grievous loss suffered by plaintiffs and their class from the arbitrary classification herein generally and specifically alleged includes, inter alia, (i) deprivation during the period of segregation of the opportunity to obtain fixed parole date from the Adult Authority or to maintain a parole date previously fixed; (ii) inclusion of unproven allegations purporting to justify segregation in one's permanent record, which will in the future diminish the possibility of securing early parole; and (ii)[sic] denial of the right to participate in rehabilitative programs during the period of segregation, which will also

in the future diminish the possibility of securing parole. Plaintiffs and their class are thus compelled without just cause to serve longer prison terms than other inmates of state prisons.

20. (a) On March 7, 1972, the California Department of Corrections, through its Director, defendant PROCUNIER, instituted rules governing disciplinary confinement in segregated housing units (Cal. Dept. of Corrections, Rules of the Director of Corrections, ch. IV, Art. 5, March 7, 1972 (hereinafter the "Director's Rules")[sic], a copy of which is annexed hereto as Exhibit A. On December 11, 1973, the Department, through defendant PROCUNIER, issued new rules, effective January 1, 1974, governing inmate discipline to supersede those instituted on March 7, 1972. A true and correct copy of said new rules is annexed hereto as Exhibit B. Said existing and new rules, inter alia, describe

certain procedural requirements relative to the disciplinary confinement of inmates in maximum-security segregated housing units. Pursuant to both the existing and new Director's Rules, an inmate may be ordered confined in a maximum-security segregated housing unit only by a Disciplinary Committee, whose action is predicated upon the preponderance of evidence adduced at a formal hearing at which the inmate may be present and may exercise certain minimal "rights"; such "rights" do not, however, meet the minimum requirements of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(b) The Disciplinary Committee hereinabove described are distinct from Classification Committees. The latter do not conduct hearings with respect to whether an inmate should be confined in a segregated housing unit.

The purported function of the Classification Committee at each institution is to "assign a custodial classification to each inmate when he enters the institution." (Id. § D4204) (The four basic classifications are "Maximum," "Close," "Medium," which are defined in § D4203 of the Director's Rules.) Any relaxation of custody classification must be by formal action of the Classification Committee. Although Senior Custodial Officers on duty may temporarily tighten the custodial classification of a particular inmate where such action is deemed advisable to protect the security of the institution, only a Disciplinary Committee is authorized to raise an inmate's custodial classification and it alone conducts hearings for this purpose. Plaintiffs and all members of their class are assigned to and thereafter retained in maximum-security segregated confinement pursuant to

decisions of Classification Committees. Such Committees, which hold "meetings" rather than hearings, are not required to and do not provide even the minimal procedural standards accorded by Disciplinary Committees.

21. In each of the four state prisons involved in this action, defendants and their agents have not enforced and have completely disregarded and violated the applicable Director's Rules governing inmate discipline; that is, in connection with the initial maximum-security segregated confinement hereinafter more specifically described with respect to each named plaintiff, plaintiffs have never been accorded or received the minimum administrative and constitutional protections to which they are lawfully entitled, including, but not limited to (i) a CDC Form 115 Rules Violation Report or any other specific

written notice of the reasons for such confinement, (ii) a hearing before an impartial decision-maker; (iii) the right to present evidence, including witnesses, in his behalf; (iv) the right of confrontation and cross-examination of his accusers; (v) the choice of representation by counsel or counsel-substitute; or (vi) a written decision based upon substantial evidence including reference to the evidence relied upon and the reasons for the aforesaid confinement.

22. In each of the four state prisons involved in this action, defendants or their agents have evaded their own regulations and the requirements of due process of law by relying upon "classifications" peremptorily assigned by Classification Committees, acting without even the pretense of due process of law, to "justify" the placement and retention of plaintiffs and members of the plaintiff

class in maximum-security segregated housing units for lengthy and indefinite periods of time. Said Classification Committees operate in an arbitrary and capricious manner, without prescribed standards and procedures, and without reference to a schedule of prescribed terms for particular offenses. Defendants and their agents have thus employed Classification Committees to engage in a widespread pattern and practice of punishing plaintiffs and their class randomly and without cause.

23. Said illegal and unconstitutional pattern and practice of arbitrary punishment has been implemented, inter alia [sic], pursuant to a written directive or directives from defendant PROCUNIER to defendants STONE, GUNN, NELSON and PATTERSON ordering that certain inmates suspected of membership in allegedly subversive Mexican-American

organizations and believed to have "leadership qualities" have been placed on so-called "Director's Designation" and for that reason are to be classified for lengthy and indefinite confinement in maximum-security segregated housing units in the subject state prisons. Defendant PROCUNIER has publicly acknowledged this policy of indefinitely confining inmates under "Director's Designation" in maximum-security segregated housing units, and that under said policy unsubstantiated "hunch" alone can justify indefinite confinement in a maximum-security segregated housing unit hereinabove described.

A. Plaintiff GONZALO.

24. Plaintiff GONZALO hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

25. On February 8, 1973, plaintiff GONAZLO was visited in his cell

at San Quentin by correctional officers who informed him that he had been ordered moved from normal confinement with the general prison population to maximum-security segregated confinement at "B"-Section at the same institution. Upon inquiry, plaintiff GONZALO was informally told that he was being placed in maximum-security confinement due to his "associations" with other Mexican-American inmates and because of his political beliefs and convictions.

26. On November 4, 1973, and without prior notice, plaintiff GONZALO was transferred from "B"-Section at San Quentin directly to "O"-Wing at the Central Training Facility (Soledad) where he is still confined. As in the case of his maximum-security segregated confinement at San Quentin, said plaintiff has never been presented with the alleged facts justifying such confinement nor

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given the opportunity to rebut any such charges at a hearing.

27. Plaintiff GONZALO is informed and believes and thereupon alleges that he is being held in maximum-security segregated confinement pursuant to so-called "Director's Designation" as hereinabove described in Paragraph 23.

28. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff GONZALO has lost the opportunity to obtain a fixed parole date from the California Adult Authority.

B. Plaintiff WRIGHT.

29. Plaintiff WRIGHT hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

30. On or about September 4, 1973, inmate Westley Hines was found dead

in his cell at the Central Training Facility (Soledad). Two days thereafter plaintiff WRIGHT was removed from his cell in the general prison population and placed in maximum-security segregated confinement in "O"-Wing, where he is still confined, without any explanation as to the reasons for such confinement. One week later, on September 16, 1973, plaintiff WRIGHT was taken before a Classification Committee and for the first time informed that prison authorities allegedly had received written information implicating said plaintiff with the death of inmate Hines. Said written information or the substance thereof has never been disclosed to plaintiff WRIGHT,but members of a Classification Committee advised him of their belief that though he may not have been responsible or directly involved, he had information about the death of inmate Hines. When plaintiff WRIGHT stated that

he had absolutely no involvement in or knowledge of this incident he was requested to submit to a lie detector test. Plaintiff WRIGHT agreed to such test on the condition that an attorney be present. Members of the Classification Committee refused to permit an attorney to be present during such test and solely for that reason plaintiff WRIGHT refused to take a lie detector test.

31. Plaintiff WRIGHT is informed and believes and thereupon alleges that, as a result of his refusal to take a lie detector test in the absence of counsel, he will indefinitely remain in maximum-security segregated confinement.

32. At no time has plaintiff WRIGHT been formally charged with responsibility for or complicity in the death of inmate Hines; and he has no knowledge of the events that led to said death. Nor has said plaintiff ever been charged with

any crime while incarcerated in state prison.

33. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff WRIGHT has lost the opportunity to obtain a fixed parole date from the California Adult Authority.

C. Plaintiff PENA.

34. Plaintiff PENA hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

35. On or about March 15, 1973, plaintiff PENA was moved from the general prison population at Folsom Prison to maximum-security segregated confinement in the Security Housing Unit at said institution, where he is still confined. Correctional officers advised said plaintiff that he was being held in such confinement

due to an alleged note from another inmate advising prison authorities that plaintiff PENA planned to attack him. At no time was said note shown to plaintiff PENA, nor were the specific contents thereof or the name of its author ever disclosed to him.

36. In July, 1973, a Classification Committee advised palintiff PENA that he had been "designated" by defendant PROCUNIER to be held indefinitely in maximum security segregated confinement due to the "belief" of defendant PROCUNIER that plaintiff PENA was "associated" with a subversive Mexican-American organization and believed to have "leadership qualities." At such time plaintiff PENA was orally informed by the Classification Committee that since he was under so-called "Director's Designation," as described in Paragraph 23 hereof, he would be retained in maximum-security segregated confinement indefinitely irrespective of the accuracy

of the note to prison authorities alleging said plaintiff's intention to attack another unnamed inmate.

37. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff PENA has lost the opportunity to obtain a fixed parole date from the California Adult Authority.

D. Plaintiff SALAS [sic]

38. Plaintiff SALAS hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

39. On January 16, 1973, plaintiff SALAS was taken from his cell in the general prison population at Folsom State Prison and placed in isolation in the Security Housing Unit at said institution pending further investigation of a charge that said plaintiff was in

possession of a contraband file. On January 18, 1973, said plaintiff was taken before the Disciplinary Committee at said prison for hearing of this charge. At said hearing plaintiff SALAS denied any knowledge of the subject contraband and denied either actual or constructive control of the file. Eleven days later, on January 30, 1973, plaintiff SALAS was taken before a Classification Committee and was advised by R. C. Thomas, acting chairman of the Committee, that an inmate Garcia had accepted full responsibility for the contraband. Accordingly, the chairman of the Classification Committee informed plaintiff SALAS that he was fully exonerated and that no disciplinary measures would be taken against him in connection with the charge of possessing contraband. However, other members of the Classification Committee (Mr. Thomas, Captain Campoy, Lt. Ford and Mr. Bartells), constituting a

majority thereof, informed plaintiff SALAS that it was nevertheless "the desire of the committee" to retain him in maximum-security segregated confinement in the Security Housing Unit because he was considered "an influential member of the Maxican [sic] prison community" and was believed to have "leadership qualities." Presumably for this reason, plaintiff SALAS was returned to maximum-security segregated confinement in the Security Housing Unit.

40. On March 13, 1973, plaintiff SALAS was taken before the Adjustment Center Review Committee for review of his retention in segregated confinement. Mr. B. D. Jones, a member of said Committee, stated to plaintiff SALAS: "We see from your central file that you had eight months clean time prior to being retained and you had no disciplinary beef when you were retained." The Committee further

noted that plaintiff had received excellent grades from his job assignment supervisor while a member of the general prison population. The Review Committee thereupon referred plaintiff SALAS' file back to the Classification Committee with the specific recommendation that said plaintiff be returned to the general prison population.

41. On March 22, 1973, the Classification Committee refused to release plaintiff SALAS from the Security Housing Unit, where he is still confined, for the orally stated reason that he was an influential member of the Mexican-American prison community.

42. Plaintiff SALAS is informed and believes and therefore alleges that he is being held in maximum-security segregated confinement, pursuant to so-called "Director's Designation," as hereinabove described in Paragraph 23.

43. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff SALAS has lost the opportunity to obtain a fixed parole date from the California Adult Authority.

E. Plaintiff GUILE [sic]

44. Plaintiff GUILE hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

45. On September 28, 1973, plaintiff GUILE was taken from his cell in the general prison population at San Quentin and transferred to maximum-security segregated confinement in "B"-Section at said institution. Said plaintiff remained in "B"-Section until October 2, 1973, without being given any explanation of the reasons for his segregation.

46. On October 3, 1973,

plaintiff GUILE was taken before a Classification Committee, at which meeting defendant NELSON was present. He was told by the Committee that an unnamed informer had stated that he planned to smuggle a gun into the institution. After extensive discussion of plaintiff GUILE's alleged political views, he was asked why he had corresponded with the United Prisoners Union and Venceremos and why he had testified on behalf of the defense at the criminal trial of Benton Burt and Andrea Holman Burt. A member of the Committee stated to plaintiff GUILE that he must not want to get out of prison or he would not be writing to those organizations or assisting in a criminal defense. Defendant NELSON stated to said plaintiff that he must like being a "political prisoner." Plaintiff GUILE was thereupon returned to "B"-Section where he is still confined.

47. The physical conditions of

his confinement have seriously affected plaintiff GUILE's diabetic condition. During the course of such confinement, his eyes have become runny, he has lost feeling in both legs and he feels generally ill and weak. His requests to see a physician, in particular a Dr. Hoffman who is a diabetic specialist, have been ignored and he has not been able to see said specialist or any other physician who could provide adequate medical attention. Despite his repeated requests and those of his attorney, plaintiff GUILE has not been taken to the San Quentin Hospital or its special diabetic clinic, and his physical condition has deteriorated and continues to seriously deteriorate.

48. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff GUILE has lost the opportunity to obtain a fixed

parole date from the California Adult Authority.

F. Plaintiff RICHARDSON [sic]

49. Plaintiff RICHARDSON hereby refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

50. Plaintiff Richardson is the Acting Minister of the San Quentin Mosque of the Nation of Islam, a religious organization that operates openly in California State Prisons with the knowledge of State prison officials.

51. On November 9, 1973, plaintiff RICHARDSON and 13 other high-ranking inmate members of the Nation of Islam were taken from their cells in the general prison population of San Quentin (plaintiff RICHARDSON has been in an honor unit) and transferred to maximum-security segregated confinement either in the North Segregation Unit (formerly "Death Row"),

where plaintiff RICHARDSON was placed, "B" -Section, or in the Adjustment Center at the same institution. Plaintiff RICHARDSON was given no explanation of the reasons for his confinement in the North Segregation Unit until November 14.

52. On November 14, 1973, plaintiff RICHARDSON was taken to a meeting of a Classification Committee and was there questioned about an alleged attack by inmate Robert X. Bradford upon another inmate. Plaintiff RICHARDSON replied that he had no knowledge of this matter beyond the fact that it had occurred and was apparently the result of a personal disagreement between the two inmates involved. Plaintiff RICHARDSON stated to the Committee that leadership of the Nation of Islam never precipitated violence and had no advance knowledge of or other involvement of any kind in the aforesaid altercation. Upon being asked by a member

of the Committee, "What's happening these days with the Brotherhood (i.e., the Nation of Islam)"?, [sic] plaintiff RICHARDSON responded by asking that the question be made more explicit. A member of the Committee replied, "You know what we mean." When plaintiff RICHARDSON denied that he knew what the questioner meant he was told, "That's why you are locked up." Plaintiff RICHARDSON was thereupon returned to the North Segregation Unit, where he is still confined.

53. Plaintiff RICHARDSON is informed and believes and thereupon alleges that as a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, he has lost a parole date previously fixed by the California Adult Authority.

G. Plaintiff FRIAS [sic]

54. Plaintiff FRIAS hereby

refers to and incorporates each and every allegation hereinabove set forth in Paragraphs 15 through 23.

55. On September 7, 1972, plaintiff FRIAS was moved from his cell in the general prison population at the Central Training Facility (Soledad) to maximum-security segregated confinement in "O"-Wing at the same institution. No reason for such segregated confinement was ever given said plaintiff other than undefined oral allegations respecting his alleged "associations" with other Mexican-American inmates. Thereafter, plaintiff was transferred from "O"-Wing to maximum-security segregated confinement in "B"-Section at San Quentin State Prison, and subsequently to identical confinement in the North Segregation Unit (formerly "Death Row") at the same institution.

56. On August 15, 1973, and without prior notice, plaintiff FRIAS was

transferred to the Deuel Vocational Institution where he was immediately placed in maximum-security segregated confinement in "K"-Wing, where he currently remains incarcerated.

57. During the second week in October, 1973, plaintiff FRIAS repeatedly requested medical attention for the flu. Notwithstanding such requests and the manifest seriousness of his ailment, his requests were ignored. On October 12, 1973, plaintiff refused to give up his food tray and bowl until and unless a correctional officer agreed to take him to the prison hospital. Correctional Officer D. R. Schmidt advised plaintiff FRIAS that he would receive a CDC 115 Rules Violation Report if he did not give up his tray and bowl. Plaintiff replied that he did not care and that he only wanted to see a physician. Plaintiff FRIAS was thereupon taken to the prison

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hospital where he was treated for the flu and, on October 13, 1973, received a CDC 115 Rules Violation Report for refusal to give up his food tray and bowl. As a result of this Report plaintiff FRIAS was, on October 14, 1973, found guilty of a rule violation by the Disciplinary Committee and disciplined by loss of exercise and transfer to a "quiet cell" for three days.

58. Plaintiff FRIAS is informed and believes and thereupon alleges that he is being held in maximum-security segregated confinement pursuant to so-called "Director's Designation" as hereinabove described in Paragraph 23.

59. As a result of the maximum-security segregated confinement hereinabove described, which is wholly without factual justification, plaintiff FRIAS has lost the opportunity to obtain a fixed parole date from the California Adult

Authority.

V. FIRST CAUSE OF ACTION

60. The arbitrary classification of plaintiffs and members of the class they represent for lengthy and indefinite confinement in maximum-security segregated housing units, the brutal physical and psychological conditions of such confinement, and the negative effect of such confinement on the possibility of securing parole, all imposed without good and valid cause, without prescribed standards and procedures respecting placement in and release from such confinement, and without a schedule of prescribed terms for particular offenses, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

VI. SECOND CAUSE OF ACTION

61. The confinement of plaintiffs and members of the class they

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represent in maximum-security segregated housing units at the California Training Facility (Soledad), the California State Prison at San Quentin, the California State Prison at Folsom, and the Deuel Vocational Institution constitutes cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States in respect to: (a) the totality of the physical and psychological conditions of the segregated housing units at said prisons in which plaintiffs and members of the class they represent are confined; (b) the lengthy and indefinite duration of such confinement; and (c) the fact that the punishment thus imposed, including its negative effect on parole proceedings before the California Adult Authority, is excessively disproportionate to the conduct ostensibly sought to be rectified and goes beyond what is necessary to achieve any legitimate penal aim.

VII. EQUITY

62. Plaintiffs and members of the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for declaratory judgment and an injunction is their only means of securing adequate relief. Plaintiffs and members of the plaintiff class are now suffering and will continue to suffer irreparable injury from defendants' policies and practices as set forth herein.

VIII. RELIEF

63. WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment granting plaintiffs:

(a) a [sic] declaratory judgment that:

(i) defendants' acts, policies and practices, respecting summary placement of inmates for

indefinite duration in maximum-security segregated confinement, the absence of procedures and standards governing placement in and release from such confinement, and the absence of prescribed terms of segregated confinement for particular offenses, as complained of herein, violate plaintiffs' rights and the rights of members of the plaintiff class secured by the due process clause of the Fourteenth Amendment and

(ii) the physical conditions of segregated housing units at the California Training

Facility (Soledad), the California State Prison at Folsom, the California State Prison at San Quentin, and the Deuel Vocational Institution, in which plaintiffs and members of the plaintiff class are confined, the lengthy and indefinite duration of such confinement, the adverse psychological impact of such confinement, and the disproportion between the punishment thus imposed and the conduct sought to be rectified, as complained of herein, are not necessary to the achievement of any legitimate penal aim and

constitute cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States.

(b) A preliminary and permanent injunction setting aside the punitive confinement of all named plaintiffs and members of the class they represent complained of herein, expunging such action from defendants' records, restraining defendants and their agents from reporting such actions to the California Adult Authority and reinstituting normal prison privileges to plaintiffs and members of plaintiffs' class.

(c) A preliminary and permanent injunction enjoining defendants

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and their agents from hereafter classifying or re-classifying plaintiffs and members of the class they represent for confinement in maximum-security segregated houring [sic] units for more than 30 days until and unless defendants or their agents first promulgate prescribed terms of segregated confinement for particular offenses and thereafter provide, at a minimum, the following:

(i) a CDC Form 115 Rules Violation Report or other written notice of the reasons for the proposed discipline or re-classification;

(ii) a hearing before an impartial decision-maker;

(iii) the right to

present evidence, including witnesses, in his behalf;

(iv) the right of confrontation and cross-examination of his accusers;

(v) the choice of representation by counsel or counsel-substitute; and

(vi) a written decision based upon substantial evidence including reference to the evidence relied upon and the reasons for such confinement.

(d) A preliminary and permanent injunction enjoining defendants and their agents from hereafter confining state prison inmates in maximum-security segregated

housing units for more than 30 days until and unless defendants, in timely manner, take all reasonable action necessary to make such units and the treatment accorded therein physically and psychologically compatible with the humane confinement and treatment of human beings, and requiring the adverse parties each 30 days to submit for court approval plans and schedules deemed necessary and appropriate to implement such relief;

(e) Plaintiffs' costs of this suit, including reasonable attorneys' fees; and

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(f) Such other and further relief as the Court may deem just and proper.

DATED: December 27, 1973.

Respectfully submitted,

J. ANTHONY KLINE
SIDNEY M. WOLINSKY
CHARLES R. LAWRENCE, III
FRED J. HIESTAND
VILMA S. MARTINEZ
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By: /s/ J. ANTHONY KLINE
J. ANTHONY KLINE

Attorneys for Plaintiffs

EXHIBIT

B

No. C-73-1422 SAW

OPPOSITION TO MOTION

ORIGINAL FILED
June 20, 1975

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Attorneys for Defendants,

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES C. WRIGHT, et. al., [sic]

Plaintiffs,

vs.

J. J. ENOMOTO, et. al.,

Defendants.

No. C-73-1422 SAW

OPPOSITION TO MOTION FOR RATIFICATION OF PRIOR ORDERS AND FOR RULINGS ON PRIOR MOTIONS

PRELIMINARY STATEMENT

On August 15, 1973, a complaint for declaratory and injunctive relief was filed in the United States District Court for the Northern District of California. The six named plaintiffs alleged that the action was authorized by 42 U.S.C. section [sic] 1983. An amended complaint was filed on December 27, 1973. The amended complaint, which purported to represent named plaintiffs in a civil rights class action, asserted, (1) that the classification procedures utilized by the plaintiff with respect to maximum security housing violated plaintiffs' rights to due process, and (2) that confinement in maximum security housing at San Quentin State Prison, Folsom State Prison, the Correctional Institution at Soledad, and Deuel Vocational Institution was in violation of the Eighth Amendment poscription [sic] against cruel and unusual punishment. Defendants filed a

notice of motion and motion to dismiss the amended complaint on February 7, 1974. On March 18, 1974, the court denied defendants' motion to dismiss.

On March 20, 1974, the plaintiffs filed a request for production of documents. Plaintiffs sought for alleged discovery purposes the right to inspect and copy virtually every document in the custody of the Department of Corrections and the four named State institutions without regard to whether the documents had any relation to the lawsuit. Included were requests to inspect and copy all logs maintained in the segregated housing unit, all incident reports or papers of any other type describing violent incidents, suicide attempts, nervous breakdowns, etc., all coroner's reports at the subject prisons from January 1, 1970, to the date of the request, all medical and psychiatric reports during 1972, 1973 and 1974 on inmates who,

on the date of said report, were confined in a segregated housing unit in one of the subject prisons, and all files, papers, however denominated, maintained by the California Department of Corrections or any subdivision or official thereof in the Sacramento office or at any C.D.C. institution, including, without limitations, the inmate's central file, etc.

On April 19, 1974, the defendants filed a response to the request for production of the countless thousands of documents comprehended by plaintiffs' request, advising the court that many of the documents requested by plaintiffs were qualifiedly privileged under both California and Federal law. On May 13, 1974, at a hearing on plaintiffs' motion, evidence in support of defendants' argument against indiscriminate disclosure was presented to the District Court. This evidence included confidential affidavits of inmates who had

been formerly affiliated with outlaw inmate gangs. These inmates averred that they feared for their lives if the plaintiffs were granted blanket access to all the documents sought in their request for production. This fear was based upon the belief that if plaintiffs were allowed to discover documents which revealed information concerning rival prison gangs, the plaintiffs would know the names of members or rival prison gangs, their location in each institution and other information which could be used by the gangs in their struggle with other gangs, including the names and addresses of families of rival gang members. The District Court, which had previously been advised of the fact that plaintiffs were members of rival prison gangs, refused to consider defendants offer of proof and characterized that offer as an aberration.

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The District Court then referred the motion for discovery to a magistrate who recommended on May 28, 1974, that plaintiffs' motion or production of documents be granted in its entirety. The magistrate in his order brushed aside defendants concern over prison violence and terriorist groups within the institutions stating that, "while all this may be true, the magistrate finds that such facts are totally ancillary to the issues before the court in these discovery proceedings . . ."

On June 6, 1974, the defendants filed a request for review of the magistrate's findings and recommendations. In this request, the defendants, again imploring the District Court to conduct an in-camera hearing prior to ordering indiscriminate disclosure of confidential documents where petitioners had asserted a qualified privilege of non-disclosure,

presented the affidavit of Raymond K. Procunier, Director of the California Department of Corrections, which established beyond any doubt that the release of the confidential information sought by plaintiffs would cause a danger to persons, would dangerously impair the ability of the California Department of Corrections to end the power, control, violence, threats, illegal activities and influence of illicit inmate gangs, and would greatly restrict the ability of the California Department of Corrections to program for greater rehabilitation of inmates. Once again, defendants request for an in-camera hearing was summarily rejected. Subsequently, the District Court rejected further arguments by plaintiffs contained in supplemental requests for review of the magistrate's finding and recommendations and on August 2, 1974, adopted the magistrate's recommendation and ordered blanket

production for inspection of all of the documents sought by the plaintiffs, including the central files of 1195 inmates, without any in-camera hearing whatsoever.

Throughout the proceedings in the District Court, defendants argued that the Court as a single judge District Court had neither jurisdiction to hear the case nor the jurisdiction to enter discovery orders which were contrary to State statutes and compelled State officials to act contrary to State statutes.

On August 12, 1974, defendants filed a notice of appeal pursuant to Federal Rules of Appellate Procedure, Rule 4 (a), citing United States vs. Nixon, 418 U.S. 683 (1974). At the same time defendants filed a petition for a writ of mandate and/or prohibition and a motion for stay. On November 18, 1974, the Court of Appeals denied the petition without hearing. The stay which had previously

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been granted was vacated. A petition for rehearing, suggestion for rehearing en banc and stay was then filed in the Court of Appeals. On March 3, 1975, the Court of Appeals denied the petition for rehearing, rejected the suggestion for a rehearing en banc and denied the motion for stay, citing the case of Kerr v. United States District Court, 511 Fed.2d 192 (1975) certiorari granted May 27, 1975, No. 74-1023.

On March 7, 1975, defendants filed with the Supreme Court of the United States an emergency application for stay of order. On March 11, 1975, the Supreme Court of the United States in the case of J. J. Enomoto, et al v. United States District Court for the Northern District of California, No. A-732, ordered that the order entered on August 2, 1974, by the United States District Court for the Northern District of California in the

case of James C. Wright, et. al. v. Raymond K. Procunier, et. al. Civil No. C-73-1422 SAW, be stayed insofar as it requires disclosure of each "complete inmate's central file" pending a timely filing of petition for writ of certiorari in the above-entitled cause (see Exhibit A).

On May 29, 1975, the petition for writ of certiorari in the case of Enomoto v. United States District Court was docketed as No. 74-1499. A copy of the petition for writ of certiorari is attached hereto as Exhibit B.

ARGUMENT

I

THIS COURT HAS NO JURISDICTION TO RATIFY THE DISCOVERY ORDER ENTERED ON AUGUST 2, 1974, BY THE UNITED STATES DISTRICT COURT SINCE THAT DISCOVERY ORDER HAS NOW BEEN STAYED BY THE SUPREME COURT OF THE UNITED STATES IN THE CASE OF ENOMOTO v. UNITED STATES DISTRICT COURT NO. 74-1499

In their motion for ratification

of prior orders, the plaintiffs ask this three judge district court to ratify Judge Weigel's discovery order entered on August 2, 1974. Since this discovery order has now been stayed by the Supreme Court of the United States pending that Court's decision on defendants' petition for a writ of certiorari, this court has no jurisdiction to ratify said discovery order. In, Schempp v. School District of Abington PA.,[sic] 184 Fed.Supp. 381 (E.D. Penn. 1959),

The Court held in pertinent part:

> "When an appeal has been taken to a higher court, as prescribed by law, ordinarily the jurisdiction of the lower court is ousted by that of the higher tribunal." Id. at 383.

Also, Cf. Haymes v. Landon, 115 Fed.Supp. 506, 507-509 (S.D.Cal. 1954).

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II

THE REQUEST BY PLAINTIFFS THAT THIS COURT RATIFY PRIOR ORDERS OF A SINGLE JUDGE DISTRICT COURT WITH RESPECT TO PLAINTIFFS MOTIONS FOR A PRELIMINARY INJUNCTION AND PARTIAL SUMMARY JUDGMENT MUST BE DENIED BECAUSE THE ORDERS DO NOT EXIST AND BECAUSE THE SINGLE JUDGE DISTRICT COURT DID NOT HAVE JURISDICTION TO HEAR THE MOTIONS UNDER THE PROVISIONS OF TITLE 28, SECTION 2284 (5)

Throughout the proceedings in the District Court, defendants argued that the court as a single judge district court had neither jurisdiction to hear the case nor the jurisdiction to enter any discovery orders which were contrary to State statutes and compelled State officials to act contrary to these State statutes. When plaintiffs filed their motions for preliminary injunction and partial summary judgment, defendants vigorously asserted that a single judge district court was without jurisdiction to entertain these motions. The hearing on plaintiffs motions

for preliminary injunction and partial summary judgment went forward over defendants objection and the matters were submitted again over defendants' objections. Although the hearing on these motions was held on October 18, 1974, no decision on these motions were ever entered. Obviously, sometime between October 18, 1974, and March 15, 1975, the date the Chief Judge of the Court of Appeals impaneled a three judge district court, the single judge district court recognized that it had no jurisdiction and could not issue any orders in this case particularly those having to do with motions for preliminary injunctions and partial summary judgments.

Title 28, section [sic] 2284 (5) is conclusive in this respect:

> "A single judge shall not appoint a master or order a reference or hear and determine any application for an interlocutory injunction or

> motion to vacate the same, dismiss the action, or enter a summary or final judgment."

III

THE MOTIONS SHOULD BE DENIED SINCE THEY DO NOT COMPLY WITH UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA LOCAL RULES OF PRACTICE 114 AND 115

Local Rules of Practice 114 provides:

> "(b) Notice. Except as otherwise ordered or allowed by the Court, all motions, except those made in the course of a hearing or trial, shall be noticed on the motion calendar of the assigned judge for hearing not less than 21 days after service of notice. Notices of motion shall be promptly filed, with proof of service."

Subsection (d) provides in part: "Motions, . . . shall be in writing,

. . . and contain specific reference to each decision , . . . or a portion of the record upon which the motion or opposition is based, wholly or in part. . ."

Rule 115 provides:

"(a) Use of affidavits. Factual contentions involved in any pre-trial or post-trial motion shall be initially presented and heard upon affidavits . . .

(c) Form and Content. Affidavits shall contain only factual, evidentiary matter, . . . and shall avoid mere conclusions or argument . . . "

The motions now before this Court fail entirely to comply with Local Rules 114 and 115. Relying apparently upon the advice of "Mr. Thompson", plaintiffs failed to have these motions noticed on the motion calendar. Furthermore,

rule [sic] 114 (d) provides that the motion must contain the name of the party on whose behalf it is presented. The record in this case shows that the attorney of record for the plaintiffs is J. Anthony Klein [sic] and Sidney M. Wolinski [sic] of Public Advocates, Inc. Although Bernard Zimmerman and Kirke M. Hasson may be associated with the lead plaintiffs, defendants submit that they may not make unilateral motions of this type without the express consent of this Court. Defendants hasten to point out to the Court that proof of service was not even made upon the lead attorneys for plaintiffs in this case. If defendants are forced to answer and oppose every motion of this type made by attorneys who are not the lead attorneys for plaintiffs it would be a violation of defendants' right to due process and equal protection of the laws.

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Rule 115 as demonstrated hereinabove provides that motions shall be initially presented and heard upon affidavits. Since no affidavits were submitted in support of plaintiffs' motions the motions should be denied summarily.

There are numerous other compelling reasons why the prior orders of the single district court judge should not be ratified nor should any of the prior proceedings be considered by this three judge court without a de novo hearing. These arguments are fully set forth in defendants' petition for writ of certiorari attached hereto as Exhibit B and are hereby incorporated by reference.

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CONCLUSION

Based upon the foregoing and Exhibits attached hereto, defendants submit that the motions made by plaintiffs should be denied.

DATED: June 20, 1975 [sic]

EVELLE J. YOUNGER, Attorney General of the State of California

JACK R. WINKLER, Chief Assistant Attorney General - Criminal Div.

EDWARD P. O'BRIEN
Assistant Attorney General

ROBERT R. GRANUCCI
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/s/ JEROME C. UTZ
JEROME C. UTZ
Deputy Attorney General

/s/ MICHAEL BUZZELL
MICHAEL BUZZELL
Deputy Attorney General

Attorneys for Defendants.

JCU:ajm
SF CR

IN THE

SUPREME COURT OF THE UNITED STATES

CERTIFICATE OF SERVICE

I, SIDNEY M. WOLINSKY, attorney for respondents herein, hereby certify that, on the 25th day of June, 1975, I caused copies of this Brief in Opposition to Petition for Writ of Certiorari, with Exhibits A and B attached, to be served on all the parties required to be served by mailing three (3) copies in a duly addressed envelope, with first class postage prepaid, to MICHAEL BUZZELL, Deputy Attorney General of the State of California and attorney for petitioners herein, 6000 State Building, San Francisco, California 94102.

DATED: July 14, 1975.

SIDNEY M. WOLINSKY
Attorney for Respondents
433 Turk Street
San Francisco, CA 94102